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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,335	10/31/2003	Anthony J. Caffcrata	J-3763	5399
28165 7590 01/30/2007 S.C. JOHNSON & SON, INC. 1525 HOWE STREET RACINE, WI 53403-2236			EXAMINER FIDEI, DAVID	
			ART UNIT 3728	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/30/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/699,335

Applicant(s)

CAFFERATA ET AL.

Examiner

David T. Fidei

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____                                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____   | 6) <input type="checkbox"/> Other: ____                           |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 20, 2006 has been entered.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 3728

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-4, 7, 8 and 11-14 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Perkins (US Patent no. 4,781,289). As to claims 1, 2, 13 and 14 Perkins discloses a package for containing and displaying at least one article comprising a back panel 12 and a front panel attached to said back panel defining a blister 18. A first outward projecting portion in a bottom portion of the blister is defined by support structure 22 and at least one additional outward projecting portion having a depth and shape conforming to at least a portion of the at least one article is defined by enclosure 20. Col. 3, lines 8-10 states the depth of support structure 22 should be comparable to the depth of product enclosure 20. To the extent that this is not viewed as setting forth a projecting portion 20 equal in depth to a greatest depth in the first outward projecting portion, such a difference would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Also, it has been held that where the only difference between the prior art device and the claimed device was a recitation of relative dimensions, the claimed device was not patentably distinct from the prior art device, Gardner v. TED Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. Denied, 469 U.S. 830, 2325 USPQ 232 (1984), see M.P.E.P. 2144.04 (IV).

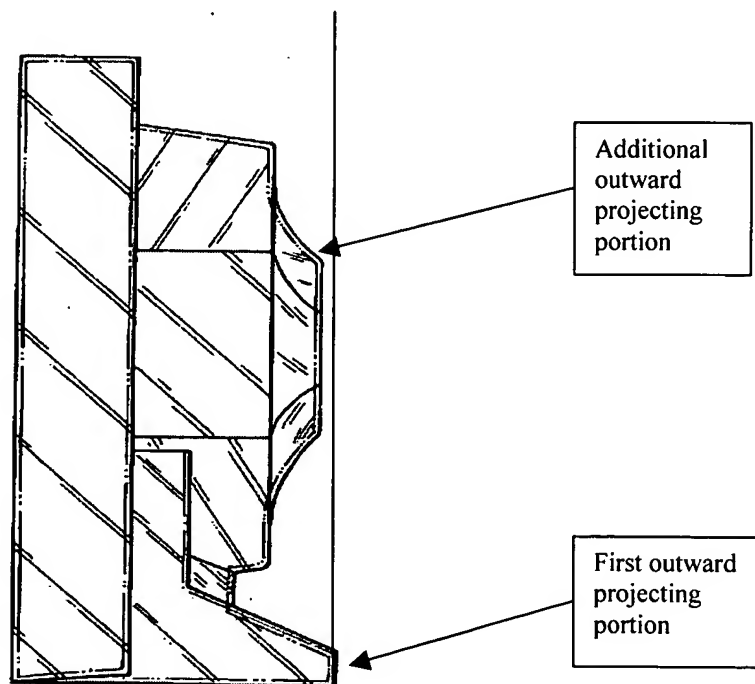
As to claims 3 and 4, the additional outward projecting portion is continuous with the first outward projecting portion in that the blister pack 18 is formed as a unitary member.

As to claims 7 and 8, the first outwardly projecting portion 22 has a front wall of uniform depth relative to surface 15.

6. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humphrey (Patent no. D447,408) in view of Perkins (US Patent no. 4,781,289). Humphrey (Patent no. D447,408). As to claims 1 and 2 a package for containing and displaying at is disclosed comprising a back panel, and a front panel attached to said back panel, wherein said front panel

Art Unit: 3728

comprises a blister pack formed of plastic and including a first outward projecting portion in a bottom portion of said blister pack and at least one additional outward projecting portion having a depth and shape conforming to at least a portion of said at least one article, wherein at least a portion said first outward projecting portion extends widthwise at least a substantial portion between a first side of said blister pack and a second side of said blister pack, and has a depth outward sufficient to allow said package to stand substantially upright. As shown by the figure below the depth of said at least a portion of said first outward projecting portion is greater than an outermost projecting portion of the depth of said at least one additional outward projecting portion.



The difference between claims 1, 2 and Humphrey resides in the depth of the first portion equal to a greatest depth of an outermost projecting portion of the additional outward portion.

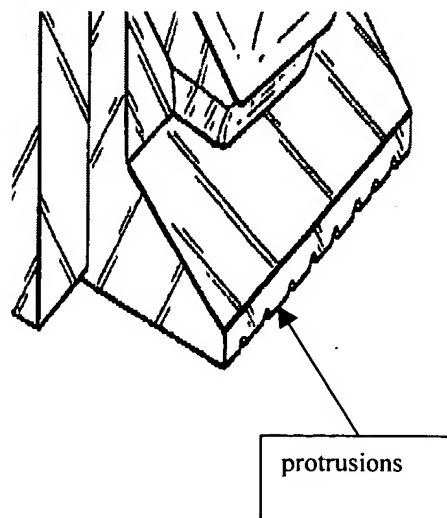
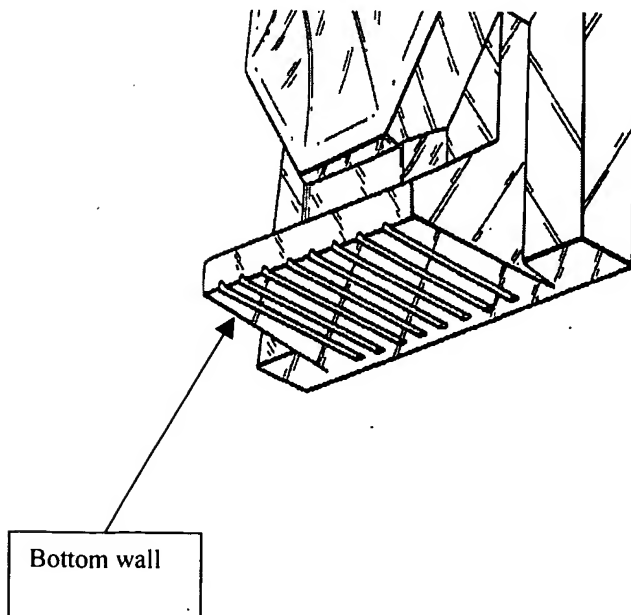
Art Unit: 3728

Perkins Col. 3, lines 8-10 states the depth of support structure 22 should be comparable to the depth of product enclosure 20. It would have been obvious to one of ordinary skill in the art to modify Humphrey by constructing the first portion equal to a greatest depth of an outermost projecting portion of the additional outward portion as suggested by Perkins, in to provide a self supporting package while not making the base excessively deep.

As to claim 3, a package is shown above according to claim 1 wherein said at least one additional outward projecting portion is continuous with said first outward projecting portion.

As to claim 4, a blister pack according to claim 2 is shown wherein said at least one additional outward projecting portion is continuous with said first outward projecting portion.

As to claim 5, a package according to claim 1 wherein said first outward projecting portion includes a bottom wall having integral therein at least two spaced apart downward protrusions, see the figure below



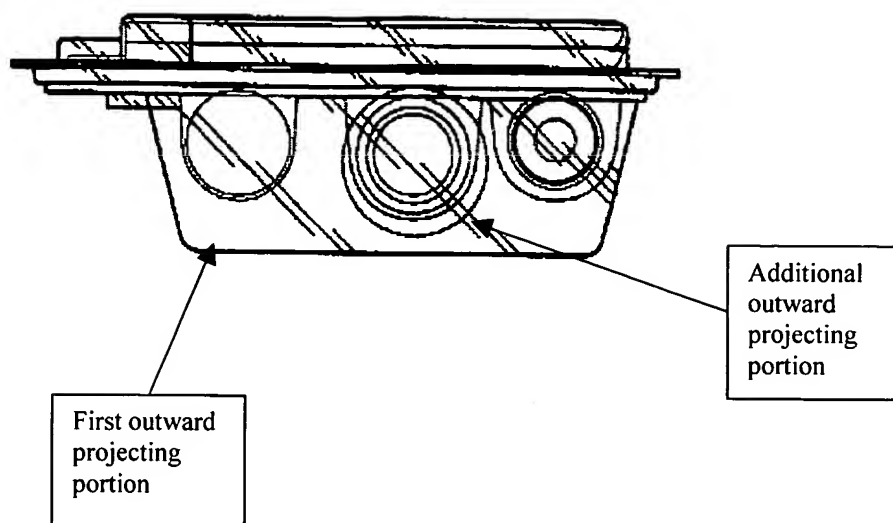
As to claim 6, a blister pack is shown according to claim 2 wherein said first outward projecting portion includes a bottom wall having integral therein at least two spaced apart downward protrusions. As shown above there are a plurality of protrusions in as much as is claimed.

As to claims 7 and 8, a package according to claims 1 and 2 is shown where the first outward projecting portion includes a front wall of uniform depth.

As to claims 9 and 10, one of said portions of non-uniform depth is a wall of one of said at least one additional outward projecting portion

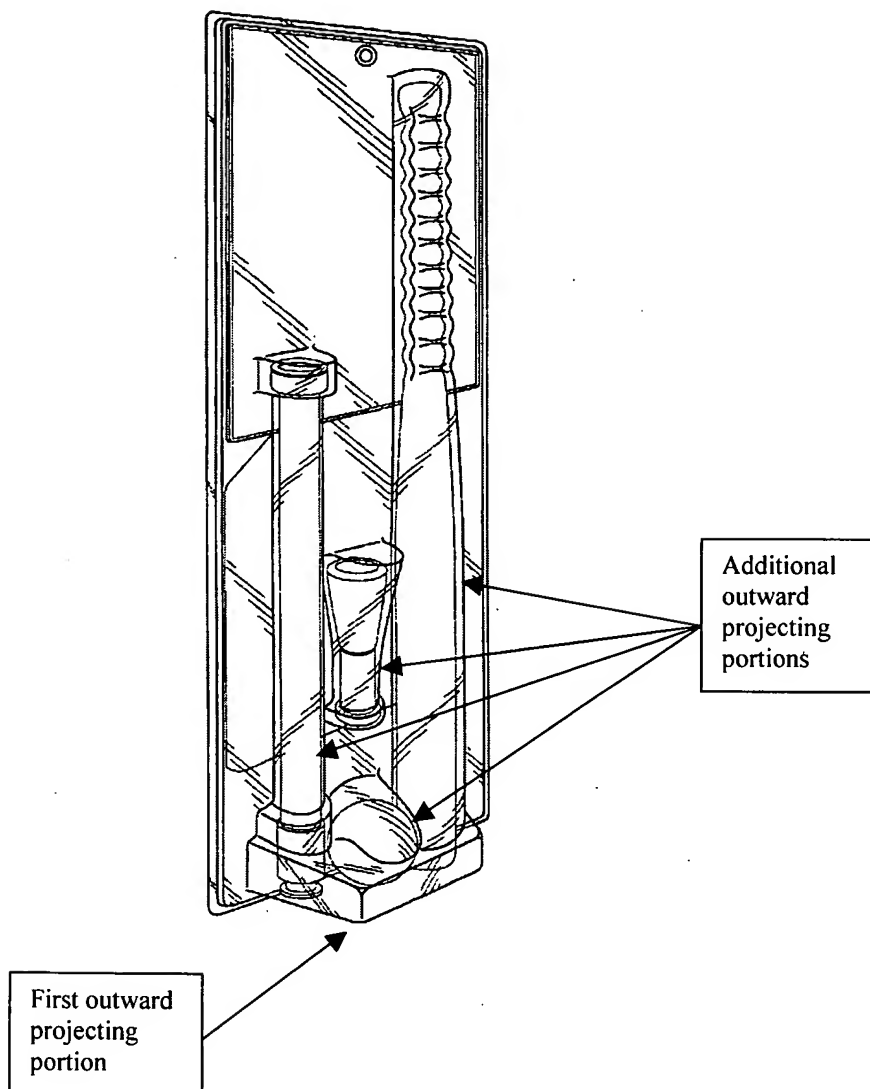
As to claims 11 and 12, the first portion is substantially rectangular when view from the front side in as much as is claimed.

7. Claims 1-4, 7-12, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Udwin et al (Patent no. D467,494) in view of Perkins (US Patent no. 4,781,289) Udwin et al (Patent no. D467,494). As to claims 1 and 2 a package for containing and displaying at is disclosed comprising a back panel, and a front panel attached to said back panel, wherein said front panel comprises a blister pack formed of plastic and including a first outward projecting portion in a bottom portion of said blister pack and at least one additional outward projecting portion having a depth and shape conforming to at least a portion of said at least one article, wherein at least a portion said first outward projecting portion extends widthwise at least a substantial portion between a first side of said blister pack and a second side of said blister pack, and has a depth outward sufficient to allow said package to stand substantially upright. As shown by the figure below the depth of said at least a portion of said first outward projecting portion is greater than an outermost projecting portion of the depth of said at least one additional outward projecting portion.



The difference between claims 1, 2 and Udwin resides in the depth of the first portion equal to a greatest depth of an outermost projecting portion of the additional outward portion. Perkins Col. 3, lines 8-10 states the depth of support structure 22 should be comparable to the depth of product enclosure 20. It would have been obvious to one of ordinary skill in the art to modify Humphrey by constructing the first portion equal to a greatest depth of an outermost projecting portion of the additional outward portion as suggested by Perkins, in to provide a self supporting package while not making the base excessively deep.



**FIG. 1**

As to claims 3 and 4, a package is shown above according to claims 1 and 2 wherein said at least one additional outward projecting portion is continuous with said first outward projecting portion.

As to claims 7 and 8, a package according to claims 1 and 2 is shown where the first outward projecting portion includes a front wall of uniform depth.

As to claims 9 and 10, one of said portions of non-uniform depth is a wall of one of said at least one additional outward projecting portion

As to claims 11 and 12, the first portion is substantially rectangular when view from the figure on the previous page in as much as is claimed.

As to claim 15 and 16, a package is shown in the figure where said at least one additional outward projecting portions are present, on either side of the middle additional projection portion, wherein said two of said at least two additional outward projecting portions are of different depths from each other.

**REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION**

8. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner's action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematurity of final rejection or admission of subsequent amendments do not necessarily reflect present practice. "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new


Art Unit: 3728

ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)" (emphasis mine), see MPEP 706.07(a).

**Conclusion**

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David T. Fidei  
Primary Examiner  
Art Unit 3728

dtf  
January 24, 2007